separated and there cannot be a claim for freight for a voyage which never began. It is not enough to hand in a bundle of papers, containing part of the required information and invite the Court to extract particulars of what is to be awarded. Had the plaintiffs succeeded I would have deprived them of the costs of the statement of claim on the ground that their particulars were framed on a wholly wrong basis.

The market value of the nuts, as assessed by Lloyd's agent, was $18 per picul and the salvage value, when wet, was $5. The loss was therefore of 90 bags, averaging 1.70 piculs, at $13 or $1,989. I allow 50 cents a bag for loading, which is on the low side, and assess the damages, *ex cautela*, at $2,034, or £237.

As the defendant had to plead to the amendment at short notice he ought to have his costs of the amended defence but there was a long adjournment (owing to my absence from Penang on other duty) during which he could, and presumably did, investigate his evidence of usage which occupied at least one full day and as he wholly failed to establish it, the onus being on him, I disallowed the costs of that day. Subject to this adjustment the plaintiffs must pay the costs of the defendant and of the third party.

Order accordingly.

GOH SOON LEONG
v.
THE COMMISSIONER OF LANDS AND TWO ORS.

[Court of Appeal (Taylor, Spenser Wilkinson and Wilson, JJ.) October 22, 1951]

[F. M. — Civil Appeal No. 7 of 1951]

Malay Reservations Enactment, No. 63 (Kedah), ss. 4, 6 and 7 —Whether transfer of land by Malay to non-Malay void ab initio.

A transfer to a non-Malay is not absolutely prohibited or necessarily void ab initio; the transferor risks forfeiture but he does not incur an automatic forfeiture; he is assured of a hearing and if he can satisfy the State Council, they will not enforce the forfeiture and in such a case they will, presumably, excise the land from the Reservation.

APPEAL from an order of the High Court, Alor Star.

Ong Huck Lim for the appellant.

The Commissioner of Lands appeared in person.

F. G. Pooley for the second respondent.

The facts appear sufficiently from the judgment of Taylor, J.

Cur. Adv. Vult.

Taylor, J. : — This was an appeal to the Court of Appeal from an order of the High Court at Alor Star dismissing an appeal to that Court from an order of the Director of Lands (as Delegate of the Commissioner of Lands) allowing an appeal to the Commissioner against an order of the Collector of Land Revenue under the Titles to Land (Occupation Period) Ordinance, expunging the memorials of an occupation transfer.

The circumstances were a little unusual and raised some technical points which were dealt with in the oral judgments delivered in the Court of Appeal; these points are of little general interest and the Court did not at the time consider written judgments to be necessary but some of the parties, including the Commissioner of Lands, have asked for a written statement of the construction which the Court put upon the Malay Reservations Enactment, which they say may assist them in other cases.

For this purpose the facts may be summarised. During the enemy occupation a Malay holder of Malay Reservation Land in Kedah sold and purported to transfer it to a non-Malay, with the permission of the Japanese authority, and the land was later transferred to another non-Malay; after the war, the Collector expunged the memorials of the transfers, thus restoring the Malay vendor to the register. A third non-Malay, who held a decree against the vendor, then sought to attach the land; this decree-holder was a stranger to all the dealings with the land. The last purchaser appealed to the Commissioner of Lands to restore the memorials of transfer; he also applied to the State Council to excise the land from the Malay Reservation; the Council deferred their decision, probably for the reason, *inter alia*, that litigation was pending; it was shewn that in view of unusual conditions during and since the war excisions had been made in comparable cases.

The Commissioner's Delegate held an enquiry with the proper parties before him; he ascertained the facts and delivered a well-reasoned judgment, stating the principles which he considered applicable; these were mainly equitable principles. His conclusion was that the purchaser had the higher equity and he accordingly ordered restoration of the transfers.

The principal question in the appeal turns on the construction of the Malay Reservations Enactment, No. 63. Section 6 does not, in terms, forbid the making of a transfer by a Malay to a non-Malay; it enacts only that such a transfer shall not operate to vest the

land in a non-Malay, save as provided by the subsequent sections. Section 7 enacts that if a Malay attempts to vest his land in a manner contrary to section 6, the State Council may forfeit the land unless the transferor shews cause against forfeiture. Section 4 enables the State Council to revoke the declaration of a Malay Reservation, as to a part of the area, i.e. to excise a specified lot, at any time, on the application of any person.

The construction which, after consultation, the members of the Court put upon these provisions, read as a whole, is that a transfer to a non-Malay is not absolutely prohibited or necessarily void *ab initio;* the transferor risks forfeiture but he does not incur an automatic forfeiture; he is assured of a hearing and if he can satisfy the Council, they will not enforce the forfeiture and in such a case they will, presumably, excise the land from the Reservation.

On this construction it appears to be doubtful whether the Collector was bound to cancel the memorials of transfer under section 13 of the Titles Ordinance but that question does not require decision in this appeal. In fact he did cancel them, perhaps rightly, perhaps unnecessarily, but in either case the parties affected were entitled to appeal to the Commissioner, so the subsequent proceedings were well founded. Their technical details were criticised but only one point of substance emerged and the Court of Appeal were able to deal with it by hearing counsel, the necessary materials being on the record.

At the end of the hearing before the Delegate the occupation memorials were, in effect, off the register and he was seised of the facts; he could dismiss the appeal (in which case the registered interest reverted to the original vendor) or he could restore the memorials or order other memorials to be made, as the justice of the case required, as he directed himself soundly on the principals to be applied, there is no reason to disturb his decision, the effect of which is to put the non-Malay transferee back on to the register. This exhausts the effect of the Titles Ordinance. If nothing more were done there might be a deadlock but attention was drawn to the words: — "at any time" in section 4 of the Malay Reservations Enactment and to the fact that the State Council had not refused the transferee's application; they had merely adjourned it; there did not appear to be any reason, when the proceedings in the Courts were concluded, why the transferee should not renew his application to the State Council in which case they could deal with the land as they thought fit, under the Enactment.

In conclusion, it is to be emphasised that this judgment relates exclusively to land in Kedah and has no necessary application in the other States, some of whose corresponding laws are differently worded.

Spenser Wilkinson, J. : — I have read the judgment of the learned President. I agree and have nothing to add.

Wilson, J. : — I have read the judgment of the learned President and am in agreement with it.

Order accordingly.

REX v. BAKAR BIN SAHAT.

[Orig. Crim. Juris. (Spenser Wilkinson, J.)
October 23, 1951]

[Penang — Criminal Revision No. 15 of 1951]

Criminal Procedure Code, ss. 12(4) and 451 — Police supervision — No punishment imposed — Recall of witness afer close of defence.

The accused was convicted under ss. 511 and 456 of the Penal Code of an attempt to commit house breaking by night. Under s. 290 of the Criminal Procedure Code, the President of the Sessions Court after convicting the accused released him on a bond for $200 with one surety for 3 years and also directed that the accused be subject to police supervision for a period of one year. One of the witnesses for the prosecution was recalled after the close of the case for the defence.

Held, (1) that as the Court did not sentence the accused to any other punishment s. 12(4) did not apply and the order for police supervision could not, therefore, be made; (2) that s. 12(4) did not apply in this case because the second conviction of the accused was not an offence punishable with imprisonment of either description for a term of two years or upwards; (3) that the power conferred by s. 451 of the Criminal Procedure Code to recall witnesses should not be exercised after the close of the case for the defence without strong reasons.

Cases referred to :—

(1) *Public Prosecutor v. Ng Teck Chuan* K.L. — Miscellaneous Application No. 16 of 1947 (unreported).
(2) *Kee Seng Nee v. Rex* (1949) M.L.J. 210.
(3) *Balfour v. Public Prosecutor* (1949) M.L.J. Supp. 8.
(4) *Rex v. Day* (1940) 1 All E.R. 402.
(5) *Jacob v. Public Prosecutor* (1949) M.L.J. 70.

REVISION.

Cur. Adv. Vult.

Spenser Wilkinson, J. : — My attention has been drawn to this case on the question of the order for one year's police supervision.